In the Supreme Court of the United States

OCTOBER TERM, 1972

No. 71-1647

FEDERAL MARITIME COMMISSION, PETITIONER,

v.

ATRAIN LINES, INC.; PACIFIC FAR EAST LINE, INC.; THE OCEANIC STEAMSHIP COMPANY; AND UNITED STATES OF AMERICA, RESPONDENTS.

WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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ter of Transmittal of Agreement No. 9903, to Francis C. Hurney, Secretary, Federal Maritime Commission [FMC], from Leo C. Ross, President, Pacific Far East Line, Inc., dated October 6, 1970; Supplement thereto	33

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[1] The opinion of the Court of Appeals for the D.C. Circuit, the Commission order approving Agreement No. 9903 and denying the request for hearing, and the Commission Order denying the petition to reopen are printed at pages 51, and 55, respectively, of the Appendix to the Petition for a Writ of Certiorari.

[2] Exhibits A-D consist of an inventory of the property and equipment transferred with the vessels.

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Chronological List of Relevant Docket Entries

October 6, 1970—Agreement No. 9903 filed with Federal Maritime Commission [FMC] for approval.

October 21, 1970—Protest, Request for Hearing and Petition to Intervene filed with FMC by Seatrain Lines, Inc.

October 23, 1970—Reply of Pacific Far East Line, Inc. to Seatrain's Protest filed with FMC.

October 27, 1970—FMC issued Order approving Agreement No. 9903, and denying request for hearing.

November 6, 1970—Petition for Reopening filed by Seatrain Lines, Inc. with FMC.

November 18, 1970—Reply of Pacific Far East Line, Inc. to Petition for Reopening filed with FMC.

November 20, 1970—Oceanic Steamship Co. filed letter adopting position of Pacific Far East Line, Inc. as its own.

December 8, 1970—FMC issued Denial of Petition to Reopen the Matter of Approval of Agreement No. 9903.

February 8, 1971—Seatrain Lines, Inc. petitioned the Court of Appeals for the District of Columbia Circuit for review of the FMC Order of December 8, 1970.

November 24, 1971—Motion for Leave to Lodge Material And to Refer Thereto on Oral Argument, United States.

December 1, 1971—Response in Opposition to Motion of United States, Federal Maritime Commission.

December 3, 1971—Reply to Response in Opposition to Motion of United States, United States.

December 8, 1971—Order of the Court of Appeals for the District of Columbia Circuit granting Motion of United States.

March 23, 1972—Opinion and Judgment of the Court of Appeals for the District of Columbia Circuit.

Agreement No. 9903, less Exhibits A-D, including Exhibits E, F, and G:

CONTRACT OF SALE

THIS AGREEMENT is made in San Francisco, California, this 1st day of October, 1970, between THE OCEANIC STEAMSHIP COMPANY, a California corporation (hereinafter called "Seller") and PACIFIC FAR EAST LINE, INC., a Delaware corporation (hereinafter called "Buyer").

PART I—VESSELS

1. (a) Seller hereby agrees to sell and Buyer agrees to buy, on the terms and conditions set forth herein, the following vessels:

(A) SS MONTEREY—official No. 264,687, of about 14,799 gross and 7,496 net registered tons, with home port of San Francisco, California,

(B) SS MARIPOSA—official No. 265,137 of about 14,812 gross and 7,444 net registered tons with home port of San Francisco, California, subject to a First Blanket Preferred Mortgage in favor of the United States of America, dated July 28, 1955 (herein "First Mortgage") and a Second Preferred Fleet Ship Mortgage in favor of Crocker-Citizens National Bank (formerly Crocker-Anglo National Bank), Trustee, dated December 28, 1956 (herein "Second Mortgage"), together with (always excluding slop chests and supplies, crews' personal effects and any leased equipment)

(i) all fresh water, unused rope and broached and unbroached deck, engine and steward's department stores and provisions remaining on board at delivery; and all the outfit, equipment, spare parts and gear of and other property appurtenant to said vessels, on board at delivery (including without limiting the generality of the foregoing, all lubricating oils, engine bar stocks, tools, furniture, rugs, curtains, lamps, mattresses, pillows, galley pots and pans, nautical instruments, and charts, plans, drawings, operating instructions, brochures, beauty shop supplies, medical supplies, photoshop supplies, print

shop supplies, silver flatware and hollow ware, glassware and steward's uniforms), and

(ii) the property and equipment ashore less any withdrawn for use on the vessel, listed on the attached Exhibit "A" pertaining to SS MARIPOSA and SS MONTEREY, and

(iii) passenger vessel store ashore listed on the attached Exhibit "B."

(b) Seller also agrees to sell and Buyer agrees to buy, on the terms and conditions set forth herein, the following vessels:

(A) SS SONOMA, official No. 252,413 of about 7,741 gross tons and 4,534 net registered tons, with home port of San Francisco, California,

(B) SS VENTURA, official No. 252,633 of about 7,870 gross tons and 4,587 net registered tons, with home port of San Francisco, California, together with (always excluding slop chests and supplies, crews' personal effects and any leased equipment)

(i) all the outfit, equipment, spare parts and gear of, and other property appurtenant to, said vessels on board and all fresh water and unused rope and broached and unbroached deck, engine and steward's department stores and provisions remaining on board at delivery, and

(ii) the property and equipment ashore less any withdrawn for use on the vessel, listed on the attached Exhibit "A" pertaining to SS SONOMA and SS VENTURA.

(c) Each of said vessels shall be delivered equipped and supplied for her intended service at a level not less than that customarily maintained by Seller, who will at all times prior to delivery provide reasonable security to prevent removal from the vessels of property subject to tranafer hereunder and will allow representatives of Buyer to participate in such security measures. Any orders to be given to ship's personnel pursuant to this Paragraph will be given by Seller, at Seller's discretion, rather than by representatives of Buyer. Buyer shall defend and indem-

nify Seller against claims or demands arising from acts of Buyer's representatives.

(d) Buyer shall pay the costs of transportation from Seller's premises and storage points of all shoreside items sold hereunder.

(e) Each vessel is classed +A1 E+AMS, by the American Bureau of Shipping. SS SONOMA and SS VENTURA will be delivered to Buyer in Class, with special survey No. 6 completed. SS MARIPOSA and SS MONTEREY will be delivered to Buyer in Class under continuous survey. Each vessel will be free of outstanding recommendations by the American Bureau of Shipping and the United States Coast Guard, with all certificates described in Exhibit "C" valid; free of average (subject to Paragraph 6 of Part I); charter free; with all gear and equipment in good operating condition; free of cargo except as provided in Paragraph 12(b) of Part V hereinafter, with all dry cargo compartments that are free of cargo clean swept; and with assurances satisfactory to Buyer that the vessel has been or will be cleared by Cargo Reinsurance Association as suitable for the carriage of cargo during 1971 without the assessment of additional premiums by cargo underwriters. Seller and Buyer agree to divide equally the costs for plates required to be replaced in order to clear the vessel with the Cargo Reinsurance Association for 1971, subject to the provisions of Part V, Paragraph 11(c).

2. The purchase price of each of the vessels, payment of which shall be in the manner provided in Part IV of this Contract, is as follows:

(A) SS SONOMA and SS VENTURA: $562,500 each,

(B) SS MARIPOSA and SS MONTEREY: $5,500,000 each.

3. (a) The sale of each vessel is subject to Buyer's acceptance thereof within 48 hours after Buyer superficially inspects the vessel afloat in San Francisco or such other scheduled United States Pacific Coast port as Buyer may timely elect, and inspects the vessel's American Bureau of Shipping and United States Coast Guard records. Such inspection shall be conducted not later than the next call of each vessel at such port subsequent to execution of this

Contract. It is understood that any rejection by the Buyer will be upon reasonable grounds.

(b) If the vessel is accepted, Seller agrees that thereafter during the period until it is delivered to Buyer, Seller will maintain the vessel and keep it repaired in accordance with Seller's customary maintenance and repair practices for such vessel.

4. The Buyer agrees for the benefit of the Maritime Administration and the Maritime Subsidy Board, United States Department of Commerce (herein referred to as "Maritime Administration") to be bound by all the provisions of Contract No. FMB-40 entitled "Construction-Differential Subsidy Contract" between THE OCEANIC STEAMSHIP COMPANY and the UNITED STATES OF AMERICA, represented by the FEDERAL MARITIME BOARD, dated the 28th day of July, 1955 (herein referred to as "Contract No. FMB-40") and Contract No. MA-1063, entitled "Contract of Sale of SS PINE TREE MARINER and SS FREE STATE MARINER" between THE OCEANIC STEAMSHIP COMPANY and the UNITED STATES OF AMERICA acting through the DEPARTMENT OF COMMERCE, MARITIME ADMINISTRATION, including the provisions relating to the documentation, insurance, operation, and purchase and requisition by the UNITED STATES OF AMERICA of the SS MONTEREY (ex SS FREE STATE MARINER) and SS MARIPOSA (ex SS PINE TREE MARINER).

5. (a) This Contract shall not be effective unless the Maritime Administration, in writing, gives the consent required by Part II, Paragraph 27(b) of Contract No. FMB-44 entitled "Operating-Differential Subsidy Agreement" between THE OCEANIC STEAMSHIP COMPANY and the UNITED STATES OF AMERICA represented by the MARITIME ADMINISTRATION dated July 28, 1955, hereinafter referred to as "Contract No. FMB-44" and agrees to the amendment of said Contract to relieve Seller of the obligation to operate the foregoing vessels on Trade Route No. 27 and agrees to amend Contract No. FMB-81 entitled "Operating-Differential Subsidy Agreement" between PACIFIC FAR EAST LINE and the UNITED STATES OF AMERICA represented by the MARITIME ADMINISTRATION dated October 24, 1958,